IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

Crl.MC.No. 5616 of 2003(Y)

STC.5581/2003 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

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PETITIONER: ACCUSED NO.4:

BAIJU SEKHAR,
COMMERCIAL MANAGER, M/S. KHAITAN INDIA LTD.,
T.D.ROAD, ERNAKULAM.

BY ADV. SRI.O.V.MANIPRASAD
SRI.B.M.AJITH

RESPONDENTS: COMPLAINANT:

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1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE INSPECTOR,
LEGAL METROLOGY, CIRCLE-II,
MANJERI, MALAPPURAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 6-07-2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.M.C.No. 5616 of 2003

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Dated, this the 6th day of July 2007

ORDER

In this Petition filed under Sec. 482 Cr.P.C. the petitioner who is the 4th accused in Annexure I complaint alleging offences punishable under Section 39 read with Sec. 63 of the Standards of Weights and Measures Act, 1976 and Rules 6(1), 10, 12, 23 (1) read with Rule 39 of the Standards of Weights and Measures (packaged commodities) Rules 1977 and Sec. 33 read with Sec. 51 of the Standards of Weights and Measures (Enforcement) Act, 1985, seeks to quash Annexure-I and all further proceedings against him in S.T.C. 5581/2003 on the file of J.F.C.M., Malappuram. One of the main grounds urged by the petitioner assailing the cognizance is that all the aforementioned offences are offences for which the period of limitation is six months under Sec. 468 Cr.P.C. and Annexure - I complaint was filed with a delay of 253 days for which Annexure - II petition was filed for condoning the delay and the learned Magistrate took cognizance of the offences without passing any orders on the delay petition to the extreme prejudice to the petitioner herein. The petitioner has a further ground that Annexure I complaint does not make out an

offence so far as it relates to the petitioner. It is too premature to consider this second contention since the learned Magistrate had taken cognizance of the offences on Annexure - I complaint without passing any orders on Annexure-II petition to condone the delay. The Magistrate could not have taken up Annexure - I complaint for consideration without condoning the delay for which notice to the accused was a must. ***Vide State of Maharashtra v. Sharadchandre Vinyak Dongre and Others - AIR 1995 SC 231 and Valsan v. State of Kerala 2003 (2) KLT 1050.*** The cognizance taken by the Magistrate on Annexure - I complaint is therefore, bad in law and is accordingly quashed. The Magistrate shall give notice to the accused on Annexure-II petition to condone the delay and it is only if the Magistrate decides to condone the delay , he can proceed to consider Annexure - I complaint to see whether cognizance to the offences alleged therein can be taken and that too against all the six accused therein.

This Crl.M.c. is accordingly allowed.

V. RAMKUMAR,
(JUDGE)

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